

MEMORANDUM

TO: Council Member Glaros, Council Member Dernoga

FROM: Barbara J. Stone, Administrator
Board of Appeals

RE: Legislative Referral – CB-16-21

DATE: May 18, 2021

The Board of Appeals has reviewed Legislative Referral CB-16-21 DR-2 and have the following comments:

- (1) **A specific parcel of land is physically unique and unusual in a manner different from the nature of surrounding properties with respect to exceptional narrowness, shallowness, shape, exceptional topographic conditions, or other extraordinary conditions peculiar to the specific parcel (such as historical significance or environmentally sensitive features);**

The proposed section also deletes the existing clause “or other extraordinary situations or conditions”, a clause that has historically provided the Board the authority and opportunity to make determinations in situational and unusual cases. The Board has utilized this clause in practice for decades for residents in every district throughout the county in order for residents to enjoy their properties consistent with the legislative intent and spirit of the Zoning Ordinance.

- (5) **Such variance will not SUBSTANTIALLY IMPAIR the use and enjoyment of adjoining or neighboring properties.**

- a. We repeat that the balancing test applied in *McLean v. Soley*, 270 Md. 208, 213, 310 A.2d 783 (Md. 1973) seems appropriate here. The court emphasized that it should be determine “whether a grant of the variance applied for would do substantial justice to an applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other owners.
- b. That court also wisely emphasized that the spirit of the ordinance should be observed.
- c. The Board over the years has sought to follow the legislative spirit of Section 27-230 in balancing the interests of the parties, including those of adjoining

parties, in rendering a decision in contested matters. We believe we already served the county and all residents well in this regard.

- d. The Board notes that it already consistently considers, and indeed strongly encourages, the testimonies of all persons, especially adjoining owners and indeed other property owners, in reaching a determination consistent with the provisions and spirit of Section 270. This has been the Board's practice and procedure for decades.
- e. The proposed section provides an adjoining neighbor with the new power to assert a "use and enjoyment" standard which will only serve to weaken or obscure the balancing test now employed.
- f. We believe that the **SUBSTANTIALLY IMPAIR** standard is unnecessary given that adjoining neighbors are considered interest parties and may appeal a Board of Appeals decision to the Circuit Court should the Board misapply the balancing test in its decisions.
- g. It is unclear what "use and enjoyment" pertains to as it relates to granting variances. Is it referring to recreational, industrial, commercial, rental, or other types of use? How should **SUBSTANTIALLY IMPAIRED** be determined in each circumstance? Suppose different neighbors have competing **SUBSTANTIALLY IMPAIRED** arguments with each other?
- h. We agree that that it is important that the concerns of adjoining neighbors should be given great consideration in variance applications/appeals, but practice and procedures are already in place to readily address their concerns.